

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1579 of 2007

Lakshmi

.. Petitioner

Vs

1. State of Tamilnadu
rep. by its Secretary to Government
Prohibition and Excise Department
Secretariat, Chennai-600 009.

2. The District Collector and
District Magistrate
Kancheepuram District
Kancheepuram.

.. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mrs. A. Vijayalakshmi

For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Jayaraman, son of Kothandan, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral

Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records pertaining to the detention order passed against the detenu by the second respondent in proceedings No.BDFGISSV/69/2007, dated 26.10.2007, set aside the same and to direct the respondents to produce the body of the detenu, now detained at Central Prison, Puzhal, Chennai before this Court and to set him at liberty.

3.1. On 9.10.2007, the Inspector of Police attached to Prohibition Enforcement Wing, Madurantakam, conducted prohibition raid at Sandaimedu, Acharapakkam, where he noticed the detenu selling illicit arrack and immediately, he surrounded the detenu and apprehended him at the spot. After making the seizure of the illicit arrack found at the spot, the Inspector of Police returned to the police station along with the detenu and the seized properties and registered a case in Crime No.1075/2007 for the offence punishable under Section 4(1)(i), 4(1)(aaa) & 4(1)(A) of the Tamil Nadu Prohibition Act r/w Rules 6 & 11 of Rectified Spirit Rules. The detenu was sent for judicial remand. The samples, as per the chemical analysis report, were found to contain 8.5% w/v of atropine.

3.2. The second respondent, taking note of the above case as a ground case and finding that there are six adverse cases of alike nature in Crime Nos.63/2006, 206/2006, 319/2006, 67/2007, 350/2007 and 219/2007 on the file of Acharapakkam Police Station for the offence punishable under Section 4(1)(i), 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act r/w Rules 6 and 11 of the Rectified Spirit Rules, having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the petitioner in her representation dated 31.10.2007 that the detenu was taken by the police on 8.10.2007 and not on 9.10.2007, as mentioned in the detention order, was not considered in the rejection order dated 21.11.2007.

5. We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 9.10.2007 with respect to the ground case, in the representation of the petitioner dated 31.10.2007, the petitioner had specifically stated that the detenu was taken on 8.10.2007 by the Police and was kept under their custody till 9.10.2007 and thereafter, a false case was foisted against him. However, the first respondent, while passing the order of rejection dated 21.11.2007 rejecting the representation of the petitioner dated 31.10.2007, had not considered the contention raised by the petitioner as to the arrest of the detenu.

6. We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the order of detention dated 26.10.2007 is vitiated and the same is set aside. The detenu Jayaraman is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
Prohibition & Excise Department
Secretariat, Chennai 9.

2. The District Collector and
District Magistrate
Kancheepuram District
Kancheepuram.

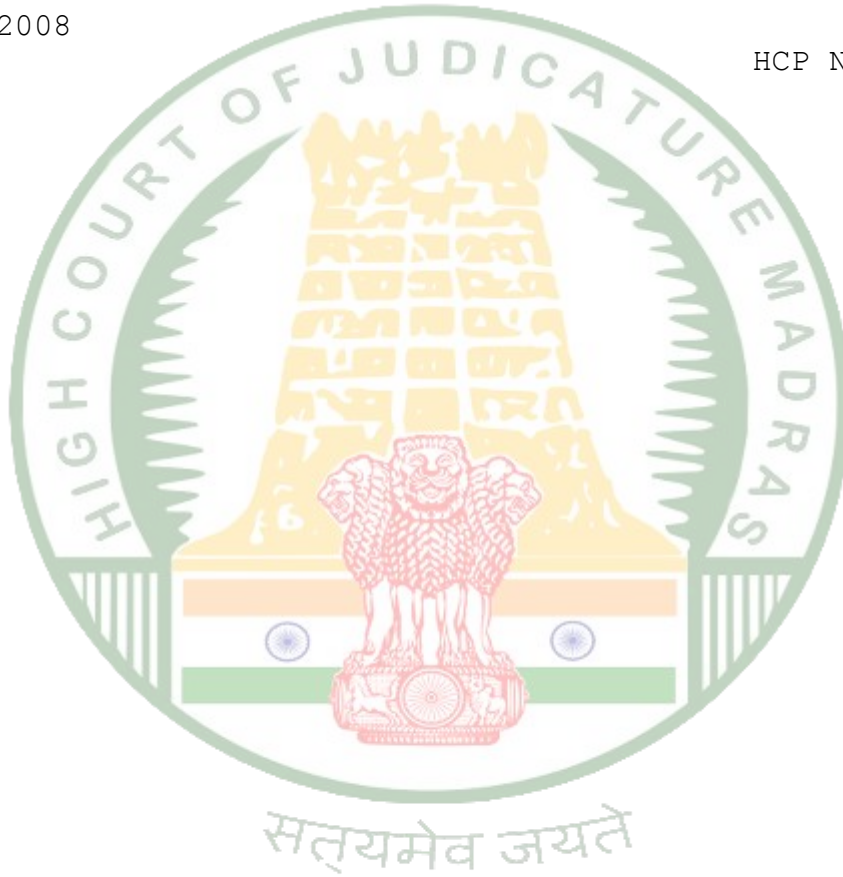
3. The Superintendent
Central Prison
Puzhal, Chennai.

4. The Joint Secretary
to the Government of Tamil Nadu,
Public (Law and Order) Department,
Fort St George, Chennai 9.

5. The Public Prosecutor
High Court, Madras.

PUR(CO)
SR/4.1.2008

HCP No.1579 of 2007



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